

SUBCHAPTER B—REGULATIONS AFFECTING MARITIME CARRIERS, OCEAN FREIGHT FORWARDERS, MARINE TERMINAL OPERATIONS, PASSENGER VESSELS, TARIFFS AND SERVICE CONTRACTS

PART 510—LICENSING OF OCEAN FREIGHT FORWARDERS

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Subpart A—General

§510.1 Scope.

(a) This part sets forth regulations providing for the licensing as ocean freight forwarders of persons, including individuals, corporations and partnerships, who wish to carry on the business of freight forwarding. This part also prescribes the bonding requirements and the duties and responsibilities

of ocean freight forwarders, regulations concerning practices of freight forwarders and common carriers, and the grounds and procedures for revocation and suspension of licenses.

(b) Information obtained under this part is used to determine the qualifications of freight forwarders and their compliance with shipping statutes and regulations. Failure to follow the provisions of this part may result in denial, revocation or suspension of a freight forwarder license. Persons operating without the proper license may be subject to civil penalties not to exceed \$5,000 for each such violation unless the violation is willfully and knowingly committed, in which case the amount of the civil penalty may not exceed \$25,000 for each violation; for other violations of the provisions of this part, the civil penalties range from \$5,000 to \$25,000 for each violation (46 U.S.C. app. 1712). Each day of a continuing violation shall constitute a separate violation.

§510.2 Definitions.

The terms used in this part are defined as follows:

(a) *Act* means the Shipping Act of 1984 (46 U.S.C. app. 1701–1720).

(b) *Beneficial interest* includes a lien or interest in or right to use, enjoy, profit, benefit, or receive any advantage, either proprietary or financial, from the whole or any part of a shipment of cargo where such interest arises from the financing of the shipment or by operation of law, or by agreement, express or implied. The term *beneficial interest* shall not include any obligation in favor of a freight forwarder arising solely by reason of the advance of out-of-pocket expenses incurred in dispatching a shipment.

(c) *Branch office* means any office established by or maintained by or under the control of a licensee for the purpose of rendering freight forwarding services, which office is located at an

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address different from that of the licensee's designated home office. This term does not include a separately incorporated entity.

(d) *Brokerage* refers to payment by a common carrier to an ocean freight broker for the performance of services as specified in paragraph (m) of this section.

(e) *Common carrier* means any person holding itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation that:

(1) Assumes responsibility for the transportation from the port or point of receipt to the port or point of destination, and

(2) Utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country.

(f) *Compensation* means payment by a common carrier to a freight forwarder for the performance of services as specified in § 510.23(c) of this part.

(g) *Freight forwarding fee* means charges billed by a freight forwarder to a shipper, consignee, seller, purchaser, or any agent thereof, for the performance of freight forwarding services.

(h) *Freight forwarding services* refers to the dispatching of shipments on behalf of others, in order to facilitate shipment by a common carrier, which may include, but are not limited to, the following:

(1) Ordering cargo to port;
(2) Preparing and/or processing export declarations;

(3) Booking, arranging for or confirming cargo space;

(4) Preparing or processing delivery orders or dock receipts;

(5) Preparing and/or processing ocean bills of lading;

(6) Preparing or processing consular documents or arranging for their certification;

(7) Arranging for warehouse storage;

(8) Arranging for cargo insurance;

(9) Clearing shipments in accordance with United States Government export regulations;

(10) Preparing and/or sending advance notifications of shipments or other

documents to banks, shippers, or consignees, as required;

(11) Handling freight or other monies advanced by shippers, or remitting or advancing freight or other monies or credit in connection with the dispatching of shipments;

(12) Coordinating the movement of shipments from origin to vessel; and

(13) Giving expert advice to exporters concerning letters of credit, other documents, licenses or inspections, or on problems germane to the cargoes' dispatch.

(i) *From the United States* means oceanborne export commerce from the United States, its Territories, or possessions to foreign countries.

(j) *Licensee* is any person licensed by the Federal Maritime Commission as an ocean freight forwarder.

(k) *Non-vessel-operating common carrier* means a common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common carrier.

(l) *Ocean common carrier* means a vessel-operating common carrier but the term does not include one engaged in ocean transportation by ferry boat or ocean tramp.

(m) *Ocean freight broker* is an entity which is engaged by a carrier to secure cargo for such carrier and/or to sell or offer for sale ocean transportation services and which holds itself out to the public as one who negotiates between shipper or consignee and carrier for the purchase, sale, conditions and terms of transportation.

(n) *Ocean freight forwarder* means a person in the United States that:

(1) Dispatches shipments from the United States via common carriers and books or otherwise arranges space for those shipments on behalf of shippers; and

(2) Processes the documentation or performs related activities incident to those shipments.

(o) *Principal*, except as used in Surety Bond Form FMC 59, Rev., refers to the shipper, consignee, seller, or purchaser of property, and to anyone acting on

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behalf of such shipper, consignee, seller, or purchaser of property, who employs the services of a licensee to facilitate the ocean transportation of such property.

(p) *Reduced forwarding fees* means charges to a principal for forwarding services that are below the licensee's usual charges for such services.

(q) *Shipment* means all of the cargo carried under the terms of a single bill of lading.

(r) *Shipper* means an owner or person for whose account the ocean transportation of cargo is provided or the person to whom delivery is to be made.

(s) *Small shipment* refers to a single shipment sent by one consignor to one consignee on one bill of lading which does not exceed the underlying common carrier's minimum charge rule.

(t) *Special contract* is a contract for freight forwarding services which provides for a periodic lump sum fee.

(u) *United States* includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, and all other United States territories and possessions.

§ 510.3 License; when required.

Except as otherwise provided in this part, a person must hold a valid ocean freight forwarder license in order to perform freight forwarding services, and, except as provided in § 510.4, no person shall perform, or hold out to perform, such services unless such person holds a valid license issued by the Commission to engage in such business. A separate license is required for each branch office that is separately incorporated.

§ 510.4 License; when not required.

A license is not required in the following circumstances:

(a) *Shipper*. Any person whose primary business is the sale of merchandise may, without a license, dispatch and perform freight forwarding services on behalf of its own shipments, or on behalf of shipments or consolidated shipments of a parent, subsidiary, affiliate, or associated company. Such person shall not receive compensation from the common carrier for any serv-

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ices rendered in connection with such shipments.

(b) *Employee or branch office of licensed forwarder*. An individual employee or unincorporated branch office of a licensed ocean freight forwarder is not required to be licensed in order to act solely for such licensee, but each licensed ocean freight forwarder will be held strictly responsible hereunder for the acts or omissions of any of its employees rendered in connection with the conduct of the business.

(c) *Common carrier*. A common carrier, or agent thereof, may perform ocean freight forwarding services without a license only with respect to cargo carried under such carrier's own bill of lading. Charges for such forwarding services shall be assessed in conformance with the carrier's published tariffs on file with the Commission.

(d) *Ocean freight brokers*. An ocean freight broker is not required to be licensed to perform those services specified in § 510.2(m).

Subpart B—Eligibility and Procedure for Licensing; Bond Requirements

§ 510.11 Basic requirements for licensing; eligibility.

(a) *Necessary qualifications*. To be eligible for an ocean freight forwarder's license, the applicant must demonstrate to the Commission that:

(1) It possesses the necessary experience, that is, its qualifying individual has a minimum of three (3) years experience in ocean freight forwarding duties in the United States, and the necessary character to render forwarding services; and

(2) It has obtained and filed with the Commission a valid surety bond in conformance with § 510.14.

(b) *Qualifying individual*. The following individuals must qualify the applicant for a license:

(1) *Sole proprietorship*— The applicant sole proprietor.

(2) *Partnership*— At least one of the active managing partners, but all partners must execute the application.

(3) *Corporation*— At least one of the active corporate officers.

(c) *Affiliates of forwarders*. An independently qualified applicant may be